IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WP(C).No. 21597 of 2007(U)

PETITIONERS:

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1. T.S. NOWSHAD,
THALIKULAM, KODAKARA, THRISSUR DISTRICT.

*** 2. M.A. TITO,**
MOYALAN HOUSE, PALLIKUNNU, VARANDARAPPILLY,
THRISSUR DISTRICT. - D E L E T E D.

(*2ND PETITIONER IS DELETED FROM THE PARTY ARRAY AS PER ORDER DTD. 24/10/2007 IN I.A.NO.12199/07)

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:

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1. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY, THRISSUR.

2. MANOJ V., S/O. VIJAYAKUMAR,
MADATHIL HOUSE, MURIYAD P.O., KALLETTINKARA,
THRISSUR DISTRICT.

BY ADV. SRI.K.MOHANAKANNAN for R2
SMT.A.R.PRAVITHA
BY GOVERNMENT PLEADER SRI. M.R.SABU for R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON 30/11/2007 DELIVERED THE FOLLOWING:

KSS

WPC.NO.21597/2007 U

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE TIMINGS ISSUED TO THE 1ST PETITIONER DTD. 18/09/2002.**

EXT.P2: **COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DTD. 6/03/02.**

EXT.P3: **COPY OF THE ORDER OF THE STATE DTD. 22/08/2005 IN MVARP NO.158/2005.**

EXT.P4: **COPY OF THE ORDER OF THE STAT DTD. 1/08/2006 IN MVARP NO.103/2006.**

EXT.P5: **COPY OF THE JUDGMENT DTD. 1/02/07 IN WP 31788/06.**

EXT.P6: **COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DTD. 7/06/07.**

EXT.P7: **COPY OF THE REPRESENTATION PREFERRED BY THE 2ND PETITIONER TO THE 1ST RESPONDENT DTD. 19/06/07.**

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): **COPY OF ORDER NO.C4/51457/04 DTD. 7/01/2005.**

EXT.R2(B): **COPY OF THE PROCEEDINGS ORDER NO.C4/33818/02R DTD. 29/06/2002.**

EXT.R2(C): **COPY OF THE JUDGMENT DTD. 28/06/2007 IN C.C.C.NO. 669/07.**

/TRUE COPY/

P.A.TO JUDGE

KSS

ANTONY DOMINIC, J.

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W.P.(C) No. 21597 OF 2007 U
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Dated this the 30th day of November, 2007

J U D G M E N T

Petitioner is a stage carriage operator in the route Irinjalakuda-Amballur while the 2nd respondent is operating in the route Irinjalakuda-Ayyanthole. It is stated in the writ petition that they have a common sector of about 20 kms. Before his vehicle was transferred to the 2nd respondent, his transferor had applied to the 1st respondent for revision of timing and on its rejection had filed a revision before the STAT, which passed Ext.P3 order remanding the matter to the 1st respondent for reconsideration by resettlement of timings. It is stated that in the meanwhile, the vehicle was transferred to the 2nd respondent and though timing conference was convened by the 1st respondent, Ext.P3 decision was not given effect to in view of the objections that were raised. The matter was taken up before the STAT and by Ext.P4, the STAT again directed to give effect to Ext.P3.

2. For the implementation of Ext.P4, a writ petition was filed as WP(C) No.31788/06, which was disposed of by Ext.P5 judgment directing the 1st respondent to settle the time as directed by the STAT. Consequently, the matter reached the 1st respondent and the Secretary by Ext.P6 order dated 7/6/07 held that since there was no time to conduct a hearing, the 2nd respondent be issued with a set of proposed timings as stated in Ext.P6 order subject to the condition that the timings will be revised if there arises any objection. Objecting to the timing in Ext.P6, after filing Ext.P7 representation, this writ petition has been filed mainly contending that the Secretary had acted illegally in fixing an adhoc timing.

3. 2nd respondent has filed a counter affidavit where attempt is made to justify Ext.P6. It is stated that the very basis of the writ petition is incorrect in as much as according to the 2nd respondent, there is no clash of timing between the petitioner and the 2nd respondent. It is contended that the petitioner is not an aggrieved party to maintain the writ petition. It is also stated that Secretary was justified in issuing

Ext.P6 and that if at all anybody is aggrieved, objection can be filed before the 1st respondent itself.

4. The counsel for the writ petitioner contended for the position that the Secretary, RTA could not have fixed a tentative timing relying on the judgment of this court in the case of **R.K.V.Motors and Timbers Ltd. v. RTA, Trivandrum (1968 KLT 73)**. In the peculiar facts of this case, I do not think I am called upon to decide that issue. Irrespective of the contentions raised, in my view, a factual adjudication as to whether the petitioner is aggrieved on account of Ext.P6 is also necessary. This can be done by the RTA itself. Ext.P6 itself shows that the proposed timings fixed for the 2nd respondent is subject to revision, if there is any objection. Therefore, the RTA itself has permitted rival operators to file objections, if they are aggrieved by the timings. It is availing of this opportunity that the petitioner has filed Ext.P7.

5. In view of the matter, I am inclined to dispose of this writ petition directing that the 1st respondent shall consider Ext.P7, with notice to the petitioner and also the 2nd respondent and pass final

orders in the matter.

This the 1st respondent shall do within 6 weeks of receipt of a copy of this judgment.

ANTONY DOMINIC
JUDGE

Rp/-